

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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J ■■■ B ■■■ a minor, by his parent and
natural guardian, SONIA BAEZ,

Plaintiff.

-against-

THE CITY OF NEW YORK, NEW YORK
POLICE DEPARTMENT and POLICE
OFFICERS DANIEL LANNING, SERGEANT
JEFF ROSENBERG, SERGEANT MARRIN,
and POLICE OFFICER JOHN DOE,
Individually and in their Official Capacities,

Defendants.
-----x

**AMENDED COMPLAINT
AND DEMAND FOR
JURY TRIAL**

09CV2635

Plaintiff, J ■■■ B ■■■ by his parent and natural guardian, Sonia Baez, and by and
through his attorneys, **Fisher & Byrjalsen, PLLC**, complaining of the defendants herein,
respectfully shows the Court and alleges:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for compensatory damages, punitive damages, and
attorney's fees pursuant to 42 U.S.C. §§ 1981, 1983, and 1988, for the wrongful acts of
Defendants THE CITY OF NEW YORK and NEW YORK POLICE DEPARTMENT and
POLICE OFFICERS LANNING, SERGEANT ROSENBERG, SERGEANT MARRIN and
POLICE OFFICER JOHN DOE, as Officers of the New York City Police Department, acting
under color of state law and pursuant to their authority, in violation of Plaintiff's rights secured
by the Civil Rights Act of 1871, 42 U.S.C. §§ 1981, 1983, 1988; by the United States

Constitution, including its Fourth, Fifth, Eighth, and Fourteenth Amendments; and by the laws and Constitution of the State of New York.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. §§ 1981, 1983, and 1988, and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, and the constitutional, statutory, and common laws of the State of New York.

3. Jurisdiction is invoked herein pursuant to the aforementioned statutory and constitutional provisions and pursuant to 28 U.S.C. §§ 1331, 1343, this being an action seeking redress for the violation of the plaintiff's constitutional and civil rights.

4. Plaintiff further invokes this Court's pendent jurisdiction over any and all state-law claims and causes of action which derive from the same nucleus of operative facts that give rise to the federally based claims and causes of action pursuant to 28 U.S.C. § 1367.

VENUE

5. Venue is properly laid in the this District under 28 U.S.C. § 1391(b), this being the District in which the claim arose.

NOTICE OF CLAIM

6. Plaintiff filed a Notice of Claim with the Comptroller of the City of New York on or about May 19, 2009, within 90 days of the events complained of herein. More than 30 days have elapsed since the filing of the Notice of Claim, and adjustment or payment thereof has been neglected or refused.

TRIAL BY JURY

6. Plaintiff demands a trial by jury on each and every one of his claims as pled herein pursuant to Fed., R. Civ. P.38(b).

PARTIES

7. At all times relevant hereto [REDACTED] a minor, and his mother and natural guardian, Sonia Baez, are residents of Corona, New York.

8. At all times relevant hereto defendant THE CITY OF NEW YORK (hereinafter, "NYC") was and is a municipality of the State of New York and owns, operates, manages, directs, and controls the New York City Police Department, which employs the other named Defendants.

9. At all times relevant to this action, Defendants POLICE OFFICERS LANNING, SERGEANT ROSENBERG, SERGEANT MARRIN and POLICE OFFICER JOHN DOE, are and were police officers employed by the New York City Police Department (hereinafter, "NYPD"), and acting under color of state law. They are being sued in both their individual and official capacities.

10. At all times relevant hereto and in all their actions described herein, the Defendants POLICE OFFICERS LANNING, SERGEANT ROSENBERG, SERGEANT MARRIN and POLICE OFFICER JOHN DOE were acting under color of statutes, ordinances, regulations, policies, customs, and usages of the NYPD and NYC, pursuant to their authority as employees,

servants, and agents of the NYPD within the scope of employment and incidental to their otherwise lawful duties and functions as employees, servants, agents, and police officers.

11. NYC was responsible for the hiring, training, supervision, discipline, retention, and promotion of the police officers, sergeants, and/or employees of the NYPD. They are being sued both in their individual and official capacity.

FACTS

12. On December 20, 2008, at approximately 1:00 a.m., Plaintiff [REDACTED] was in or about the area of 108th Street and 38th Avenue in Corona, New York.

13. At approximately 12:30 a.m. Plaintiff was leaving a party at a friend's house.

14. As the Plaintiff was leaving the party a fight broke out between other people at the party.

15. Plaintiff was not involved in the fight.

16. Plaintiff was an onlooker to the fight.

17. A crowd of about fifteen (15) people gathered around the people fighting.

18. Plaintiff was one of the people in that crowd.

19. A car pulled up next to where the fight was.

20. Two men got out of the car.

21. The two men getting out of the car were Defendants Lanning and Rosenberg.

22. Plaintiff moved away from the crowd.

23. Defendants Lanning and Rosenberg started to chase the Plaintiff.

24. Defendant Lanning tackled Plaintiff to the ground.

25. Defendant Lanning repeatedly punched Plaintiff in his face.
26. Defendant Lanning pressed and held Plaintiff face into the ground.
27. Defendant Rosenberg kicked Plaintiff in the face and body several times.
28. Plaintiff was arrested.
29. Plaintiff was taken to the 115th Precinct.
30. Plaintiff was charged with Robbery in the Second Degree in violation of Penal Law Section 160.10(01).
31. Plaintiff was held in jail from December 20, 2008, to December 24, 2008.
32. The charges against Plaintiff were dismissed on a later date.
33. The punching by Defendants Lanning caused lacerations to Plaintiff's face.
34. The smushing by Defendants Lanning of Plaintiff's face into the pavement caused bruising, redness, skin lacerations and severe pain.
35. The kicks by Defendants Rosenberg to Plaintiff's face caused bruising, swelling and substantial headaches.
36. Plaintiff was then taken to the 115th Precinct and held there for many hours without food or water.
37. On May 19, 2009, and within ninety (90) days of the incident, a Notice of Claim on behalf of Plaintiff was served upon NYC.
38. At least thirty (30) days have elapsed since said demand and/or claim upon which this action is in part predicated was presented to NYC for adjustment and NYC has neglected and/or refused to adjust and/or make payment.

39. This action is commenced within one (1) year and ninety (90) days of the occurrence herein.

**FIRST CLAIM FOR RELIEF:
DEPRIVATION OF FEDERAL CIVIL RIGHTS**

40. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in paragraphs 1 through 39 with the same force and effect as if fully set forth herein.

41. All of the aforementioned acts of Defendants, their agents, servants, and employees were carried out under color of state law.

42. All of the aforementioned acts deprived Plaintiff [REDACTED] of the rights, privileges, and immunities guaranteed citizens of the United States by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States and in violation of 42 U.S.C. § 1983.

43. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers, with the entire actual and/or apparent authority attendant thereto.

44. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and rules of NYC and the NYPD, all under the supervision of ranking officers of said department.

45. Defendants, collectively and individually, while acting under color of state law, engaged in conduct which constituted a custom, usage, practice, procedure, or rule of his/her respective municipality/authority, which is forbidden by the Constitution of the United States.

46. By these actions, these Defendants have deprived Plaintiff of rights secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. § 1983, for which the Defendants are individually and jointly liable.

**SECOND CLAIM FOR RELIEF:
EXCESSIVE FORCE UNDER 42 U.S.C. § 1983**

47. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in paragraphs 1 through 46 with the same force and effect as if fully set forth herein.

48. The degree of force used by Defendants was excessive, unreasonable, and unwarranted.

49. Defendants' actions were intentional, willful, malicious, egregious, grossly reckless and negligent, unconscionable, and unprovoked.

50. As a result of the excessive force and brutality, Plaintiff sustained substantial pain, bleeding, bruising, and swelling about his face, head, and body, lacerations to his hip, face and knees.

51. All of the aforementioned acts of the Defendants constituted excessive force under the laws of the State of New York and the Defendants are liable said damage. Pursuant to 28 U.S.C. § 1367, this Court has pendant jurisdiction to hear and adjudicate such claims.

**THIRD CLAIM FOR RELIEF:
ASSAULT AND BATTERY**

52. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in paragraphs 1 through 51 with the same force and effect as if fully set forth herein.

53. By the aforementioned actions, the Defendants did inflict assault and battery upon the Plaintiff. The acts and conduct of the Defendant Police Officers were the direct and proximate cause of injury and damage to the Plaintiff and violated his statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

54. As a result of the foregoing, Plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, mental anguish, costs, and expenses and was otherwise damaged and injured.

**FOURTH CLAIM FOR RELIEF:
FALSE ARREST**

55. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in paragraphs 1 through 54 with the same force and effect as if fully set forth herein.

56. As a result of Defendants' aforementioned conduct, Plaintiff was subject to an illegal, improper, and false seizure and arrest by the Defendants and taken into custody and caused to be falsely imprisoned, detained, confined, incarcerated, and prosecuted by the Defendants in criminal proceedings, without any probable cause, privilege, or consent.

57. As a result of his false arrest, Plaintiff was subjected to humiliation, ridicule, and disgrace and was deprived of his liberty. Plaintiff was discredited in the minds of many members of the community.

58. All of the aforementioned acts of the Defendants constituted false arrest under the laws of the State of New York and the Defendants are liable for said damage. Pursuant to 28 U.S.C. § 1367, this Court has pendant jurisdiction to hear and adjudicate such claims.

65. The acts complained of were carried out by the aforementioned Defendants in their capacities as police officers and officials, with the entire actual and/or apparent authority attendant thereto.

66. The acts complained of were carried out by the aforementioned individual Defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of NYC and the NYPD, all under the supervision of ranking officers of said department.

67. The aforementioned customs, policies, usages, practices, procedures, and rules of NYC and the NYPD included, but were not limited to, initiating and continuing criminal proceedings without evidence of criminal activity.

68. The foregoing customs, policies, usages, practices, procedures, and rule of NYC and the NYPD constituted deliberate indifference to the safety, well-being, and constitutional rights of Plaintiff. [REDACTED]

69. The foregoing customs, policies, usages, practices, procedures, and rule of NYC and the NYPD were the proximate cause of the constitutional violations suffered by Plaintiff as alleged herein.

70. The foregoing customs, policies, usages, practices, procedures, and rule of NYC and the NYPD were the moving force behind the constitutional violations suffered by Plaintiff as alleged herein.

71. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of Plaintiff.

72. Defendants, collectively and individually, while acting under color of state law, acquiesced in a pattern of unconstitutional conduct by subordinate police officers and were directly responsible for the violation of Plaintiff's constitutional rights.

73. Defendant NYC, as municipal policymaker in the training and supervision of Defendant police officers, has pursued a policy and custom of deliberate indifference to the rights of persons in their domain who suffer violations of their freedom from the excessive use of force and unreasonable force and freedom from deprivation of Liberty without Due process of law in violation of the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983, and the Constitution and laws of the State of New York.

74. All of the foregoing acts by Defendants deprived Plaintiff of federally protected rights, including, but not limited to, the right:

- a. Not to be deprived of liberty without due process of law;
- b. To be free from unreasonable search and seizure under the Fourth and Fourteenth Amendments to the United States Constitution;
- c. To be protected against violations of his civil and constitutional rights;
- d. To be free from intentional assault, battery, and infliction of emotional distress;
- e. Not to have cruel and unusual punishment imposed upon him; and
- f. To receive equal protection under the law.

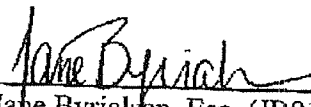
PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and prays for the following relief, jointly and severally, against the Defendants:

1. Special and compensatory damages in the amount of TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS; and
2. Punitive damages in the amount of ONE MILLION (\$1,000,000.00) DOLLARS; and
3. Reasonable attorney's fees and costs; and
4. Such other and further relief as this Court deems just and proper.

DATED: New York, New York
October 6, 2008

Respectfully submitted,


Jane Byrialsen, Esq. (JB9108)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J.B., a minor, by his parent and natural guardian,
SONIA BAEZ,¹

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK POLICE
DEPARTMENT and POLICE OFFICERS DANIEL
LANNING, SERGEANT JEFF ROSENBERG,
SERGEANT MARRIN, and POLICE OFFICER JOHN
DOE, Individually and in their Official Capacities,

Defendants.

**STIPULATION AND ORDER
OF SETTLEMENT AND
DISMISSAL**

09 CV 2635 (RRM)(JO)

WHEREAS, plaintiff J.B., by his parent and natural guardian, Sonia Baez, first commenced this action on or about June 22, 2009, by filing a complaint alleging, *inter alia*, violations of his state law rights and civil rights pursuant to 42 USC § 1983; and

WHEREAS, plaintiff filed an amended complaint in this action on or about October 7, 2009; and

WHEREAS, defendants have denied any and all liability arising out of plaintiff's allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

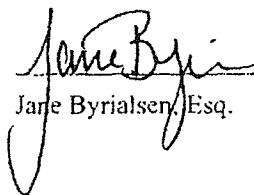
¹ In accordance with Rule 5.2 of the Federal Rules of Civil Procedure, the minor plaintiff's name is being replaced with his initials.

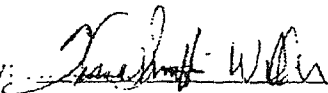
7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
January 21, 2010

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By: 
Jane Byrialsen, Esq.

By: 
Qiana Smith-Williams (QS 2172)
Assistant Corporation Counsel

SO ORDERED:

ROSLYNN R. MAUSKOPF, U.S.D.J.